

Decisions of Interest

JUNE 26, 2023

CRIMINAL

US SUPREME COURT

Jones v Hendrix | June 22, 2023

HABEAS CORPUS | AEDPA | STATUTORY INNOCENCE

The defendant appealed from an Eighth Circuit order affirming the dismissal of his habeas corpus petition for lack of subject matter jurisdiction. In a 6-3 vote, SCOTUS held that a federal prisoner cannot raise a claim of legal/statutory innocence under 28 USC § 2241 (the habeas corpus statute) if he already pursued a post-conviction motion under 28 USC § 2255—even if the claim was unavailable when he filed the original challenge. The defendant’s conviction of unlawful possession of a firearm by a felon was affirmed on direct appeal. One of his concurrent sentences was later vacated as a result of his § 2255 post-conviction motion. Years later, SCOTUS held in *Rehaif v United States* that a defendant’s knowledge that he was an unlawful possessor is a necessary element of that crime, an element not proven at the defendant’s trial. Based on the holding in *Rehaif*, the defendant filed a § 2241 habeas petition. He argued that, although prisoners authorized to file a § 2255 motion are barred from filing a § 2241 habeas petition, he was permitted to file under § 2241’s saving clause since AEDPA precluded him from filing a second § 2255 motion. The majority disagreed, finding that “Congress has chosen finality over error correction.” Justices Sotomayor, Kagan, and Jackson dissented. In their view, this decision “yields disturbing results”; it bars relief to an actually innocent prisoner, merely because he previously sought postconviction relief.

[Jones v Hendrix \(No. 21-857\)](#)

Samia v United States | June 23, 2023

CONFRONTATION CLAUSE | NONTESTIFYING CODEFENDANT

The defendant appealed from a Second Circuit order affirming his murder conviction. SCOTUS affirmed. The defendant was jointly tried with Joseph Hunter and Carl Stillwell for offenses relating to a murder-for-hire scheme; Hunter hired the defendant and Stillwell as hitmen. In a pretrial confession, Stillwell admitted to being involved but claimed he was the driver while the defendant was the triggerman. Although Stillwell did not testify at trial, the trial court permitted a DEA agent to testify to his confession, edited to omit direct references to the defendant—instead using the “other person” descriptor—and subject to a limiting instruction. SCOTUS held that the Confrontation Clause was not violated by admitting Stillwell’s confession because it only indirectly inculpated the defendant and was subject to a limiting instruction. Justices Kagan, Sotomayor, and Jackson dissented.

In their view, the majority elevated form over substance, permitted prosecutors to circumvent the Court's precedent in the *Bruton* line of cases, and undermined a vital constitutional protection for the accused in violation of the Confrontation Clause.

[Samia v United States \(No. 22-196\)](#)

TRIAL COURTS

Matter of People of the State of N.Y. for a Search Warrant | 2023 WL 4038262

EX PARTE SEARCH WARRANT | CELL PHONE | DENIED

Bronx County Criminal Court denied the People's ex parte search warrant application to extract data from a cell phone. The supporting affidavit indicated that the target, who was previously involved in firearms possession, used his phone to record an arrest that resulted in the seizure of firearms. Due to technological limitations, police would need to extract all the cell phone's data to examine it for relevant evidence. The application lacked sufficient, particularized reasonable cause to believe that the evidence sought would be found in the broad areas of the phone. While it was possible the phone contained evidence of the specified offenses, there were no specific allegations to that effect. A valid search warrant request for cell phone data must set forth reasonable date and time restrictions on the data to be searched to minimize the invasion of an owner's cell phone privacy interest.

[Matter of People of the State of N.Y. for a Search Warrant \(2023 NY Slip Op 50589\[U\]\)](#)

People v Rubio | 2023 WL 4096871

NO HEARSAY EXCEPTION | INFORMATION | DISMISSED

The defendant moved to dismiss misdemeanor charges based on CPL 30.30. He contended that the People's SOR was illusory because a superseding information, filed the same day that the People's stated their readiness, contained hearsay. Queens County Criminal Court granted the motion and dismissed the charges. An information containing hearsay may be legally sufficient if the hearsay is permitted under an exception to the hearsay rule. Contrary to the People's argument, the hearsay at issue here did not meet the business records exception. The deponent, a NYPD officer, was not in a position to attest to the record keeping procedures of the Office of the Chief Medical Examiner. The officer also did not attest that the person who recorded the information had personal knowledge of it or that the source of the information was under a business duty to accurately transmit the information. The Legal Aid Society of NYC (John Kalinowski, of counsel) represented the defendant.

[People v Rubio \(2023 NY Slip Op 50596\[U\]\)](#)

People v Hirsch | 2023 WL 4096863

DISCOVERY | MOTION TO COMPEL | GRANTED

The defendant, charged with 2nd degree CPW, moved pursuant to CPL 245.30 (3) to compel the prosecution to turn over materials obtained during the search of her husband's apartment and vehicle in relation to a murder investigation. Queens County Supreme Court granted the motion. While the materials were not subject to automatic discovery, the court exercised its discretion and ordered their disclosure. The items, including photographs and video from the searches and documentation of items recovered, were

reasonably likely to be material to the defendant's contention that she did not knowingly possess the firearms recovered from her residence. Mark Bederow represented the defendant.

[People v Hirsch \(2023 NY Slip Op 23185\)](#)

People v Galindo | 2023 WL 4141918

30.30 | EXTRADITION | MOTION DENIED

The defendant moved to dismiss on speedy trial grounds based on the People's failure to produce him after he was extradited to Texas on fugitive warrants. Kings County Criminal Court denied the motion. The defendant waived his right to the issuance of a Governor's Warrant of Extradition and any challenge to the legality of his extradition at arraignment. He became unavailable once extradited to Texas, as the People had no authority to compel an out-of-state court to produce him. Further, the defendant had been released from custody in Texas and his present location was unknown—rendering him absent within the meaning of CPL 30.30 (4) (c) (i).

[People v Galindo \(2023 NY Slip Op 50605\[U\]\)](#)

People v Nichols | 2023 WL 4068282

DISCOVERY | SERVICE AFTER 5 P.M. | TIMELY

The defendant moved to, among other things, dismiss misdemeanor charges because the People's COC was invalid. Bronx County Criminal Court upheld the People's COC and denied the motion to dismiss. After the People filed their COC, defense counsel claimed that several discovery items were missing. Because of technical issues, a 250-page document that was served electronically was not accessible to defense counsel until shortly after 5 p.m. on the 90th day of speedy trial time. This service was timely; defining the "close of business" as 5 p.m. is an anachronism where electronic filings and email confirmations have replaced in-person filings.

[People v Nichols \(2023 NY Slip Op 50591\[U\]\)](#)

ILLINOIS SUPREME COURT

People v Sneed | 2023 WL 4003913

COMPELLED TESTIMONY | CELL PHONE PASSCODE | FOREGONE CONCLUSION

The defendant appealed from an appellate court order granting the State's motion to compel him to provide the passcode to his cellphone. The Illinois Supreme Court affirmed. The defendant was charged with two counts of forgery stemming from two false paychecks made payable to him and deposited via mobile deposit. Police were unable to execute a search warrant for the defendant's cell phone because the phone was passcode protected. The Illinois Supreme Court held that compelling the act of entering a passcode to a cell phone is testimonial to the extent that performing the act implicitly asserts that the person is able to unlock the phone. Here, however, the act of entering the passcode had no testimonial value. The facts implicit in the act—that the passcode existed, was in the defendant's control, and was self-authenticating—were already known to the State. Thus, the facts were foregone conclusions and insufficiently testimonial to be privileged under the Fifth Amendment. In the dissent's view, the Illinois State Constitution foreclosed police and prosecutors from compelling the defendant to provide

his passcode to decrypt, decode, or translate the contents of the phone to be used against him in a criminal prosecution.

[People v Sneed \(2023 IL 127968\)](#)

FAMILY

SECOND DEPARTMENT

Matter of Jose S. S. G. (Norma C. G. C.) | June 21, 2023

SPECIAL IMMIGRANT JUVENILE STATUS | GUARDIANSHIP

The petitioner appealed from Nassau County Family Court orders that, after a hearing, dismissed his petitions seeking guardianship of his two nephews and denied his motions for orders that would enable his nephews to seek special immigrant juvenile status (SIJS). The Second Department reversed, granted the petitions, and made findings to enable the children to seek SIJS. It was in the children’s best interest to appoint the petitioner as their guardian. Further, the children were special immigrants—unmarried resident aliens who were less than 21 years old and dependent on a juvenile court or committed to the care of a court-appointed individual. Reunification with their father was not viable because he was deceased and return to El Salvador would not be in their best interest. Bruno J. Bembi represented the appellant.

[Matter of Jose S. S. G. \(Norma C. G. C.\) \(2023 NY Slip Op 03350\)](#)

Matter of Anuar S. A. O. (Yari C. B. M.--Lizeth O. M.) | June 21, 2023

SPECIAL IMMIGRANT JUVENILE STATUS | HEARING REQUIRED

The petitioner appealed from Nassau County Family Court orders that summarily dismissed a petition seeking guardianship of a friend’s child and denied a motion for an order that would enable the child to seek special immigrant juvenile status (SISJ). The Second Department reversed and remanded for an expedited hearing. There is no express requirement to submit certified copies of birth or death certificates in a proceeding pursuant to FCA § 661 (a), and Family Court erred by disposing of the matter without conducting a hearing or considering the child’s best interest. Bruno J. Bembi represented the appellant.

[Matter of Anuar S. A. O. \(Yari C. B. M.--Lizeth O. M.\) \(2023 NY Slip Op 03353\)](#)

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